

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DERRICK SMITH,

Petitioner,

Case No. 10-11052

v.

Hon. John Corbett O'Meara

NICK LUDWICK,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION
AND HOLDING PETITION IN ABEYANCE**

Before the court is Magistrate Judge Paul Komives's report and recommendation, filed March 14, 2013. This court "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). The court "may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." *Id.*

The parties have not filed objections to the report and recommendation. The court agrees with the magistrate judge's conclusion that this matter should be stayed to allow Petitioner to exhaust his state court remedies. The stay is conditioned on Petitioner filing a motion for relief from judgment in state court within 30 days of the date of this order. To re-open this matter, Petitioner shall file a motion to lift the stay within 30 days of exhausting the state court appeals process.

Accordingly, IT IS HEREBY ORDERED that Magistrate Judge Komives's March 14, 2013 report and recommendation is ADOPTED.

IT IS FURTHER ORDERED that this action is STAYED and Petitioner's petition is

HELD IN ABEYANCE, consistent with the conditions set forth in this order.

IT IS FURTHER ORDERED that Petitioner's motion for bond and Respondent's motion to dismiss are DENIED.

IT IS FURTHER ORDERED that all remaining pending motions are DENIED WITHOUT PREJUDICE and may be re-filed when the stay is lifted.

s/John Corbett O'Meara
United States District Judge

Date: August 20, 2013

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, August 20, 2013, using the ECF system and/or ordinary mail.

s/William Barkholz
Case Manager